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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 DAVID BEACHEM,

11 Plaintiff,

12 v.

13 WASHINGTON STATE  
14 DEPARTMENT OF CORRECTIONS *et*  
*al.*,

15 Defendants.  
16

Case No. C08-5185 FDB

ORDER ADOPTING REPORT AND  
RECOMMENDATION DISMISSING  
ACTION WITHOUT PREJUDICE

17 This matter comes before the Court on the recommendation of the Magistrate Judge that  
18 Plaintiff's civil rights action be dismissed for failure to exhaust administrative remedies. The Plaintiff  
19 has filed an objection asserting that he completed the grievance procedure prior to filing this suit.

20 The Court is not persuaded by Plaintiff's argument. The record reflects that Plaintiff filed a  
21 Level I grievance to which the Department of Corrections responded. Plaintiff did not appeal the  
22 Level I response. Having failed to exhaust administrative procedures, Plaintiff is barred from  
23 pursuing court action. See Porter v. Nussle, 534 U.S. 516 (2002).

24 The Court, having reviewed, the Report and Recommendation of Magistrate Judge J. Kelley  
25 Arnold, objection to the report and recommendation, and the remaining record, does hereby find and  
26 ORDER:


27 (1) The Court adopts the Report and Recommendation;  
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1 (2) Defendants' motion to dismiss is **GRANTED**. Plaintiff did not  
2 exhaust his administrative remedies prior to filing this action as  
required by the Prison Litigation Reform Act.

3 (3) Plaintiff's action is **DISMISSED**, without prejudice.

4 The Clerk is directed to send copies of this Order to plaintiff, counsel for Defendants, and to  
5 the Hon. J. Kelley Arnold.

6 DATED this 31<sup>st</sup> day of October, 2008.  
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10 FRANKLIN D. BURGESS  
11 UNITED STATES DISTRICT JUDGE  
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